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DECISION



*P. Martin
Pres. II*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191850

DATE: June 15, 1978

MATTER OF: Murphy Anderson Visual Concepts, Inc.

DIGEST:

Protest filed more than 10 days after actual or constructive notice of initial adverse agency action is untimely and resubmittal of objections to agency and reiteration of request for information does not extend such 10 day limitation. In any event protester has not stated any adequate basis for protest.

Murphy Anderson Visual Concepts, Inc. (Murphy Anderson) protests the award of a contract to Sponsored Comics, Inc. by the Red River Army Depot, U. S. Army (Army) under solicitation No. DAAG47-78-B-0006. After a pre-award survey, Sponsored Comics was determined to be the low responsive, responsible bidder and was awarded the contract on March 9, 1978.

In anticipation of this award, Murphy Anderson had written its congressional representative on March 8, 1978 requesting that a formal protest be lodged on grounds that the proposed awardee could not adequately perform the contract. The firm also questioned whether the proposed procurement had received adequate publicity and whether the low bidder unfairly was furnished the prior contract price. On March 9, 1978, the congressional representative requested the Army to review the matter consistent with its rules and regulations. By letter of March 20, 1978, the Army replied that its review indicated no violation of such rules and regulations. This reply, which was received on March 29, 1978, was communicated to Murphy Anderson not later than April 1, 1978. Murphy Anderson again stated its objections in a letter of April 7, 1978 to the contracting officer who replied on April 18, that the low bidder was considered to be responsive and responsible and

that the objections raised did not state a valid basis for protest. Murphy Anderson then protested directly to this Office in a letter received on May 4, 1978.

This protest is untimely because under our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1977), any protest which was filed initially with the contracting agency, must be filed with this Office within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. The protest was filed with this Office on May 4, 1978, well beyond the time limit.

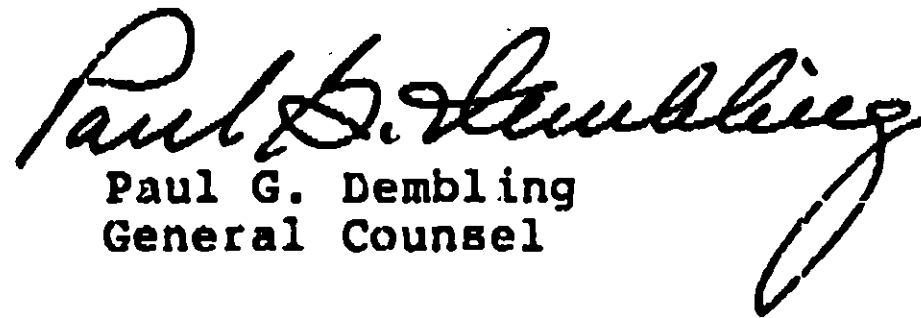
Murphy Anderson states that the factual background supporting its protest has not yet been furnished in response to its request to the Army under the Freedom of Information Act, 5 U.S.C. § 552. It contends that this has caused such delay as there has been in the submission of its protest to this Office and that the protest, if untimely, should be considered under the exception to the timeliness requirement set forth in our Bid Protest Procedures, 4 C.F.R. § 20.2(c).

In our opinion, however, Murphy Anderson has stated no valid grounds for protest to this Office even if its contentions can be fully supported. For the most part, the information requested from the Army concerns, as the protester states, "the ability of the successful bidder to fulfill the contract." Thus, they pertain to the affirmative determination of the low bidder's responsibility. This Office, however, does not review such determinations, unless fraud is alleged on the part of the contracting officer or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Angler's Company, Ltd., B-190856, January 4, 1978, 78-1 CPD 3. Here, there is no allegation that the responsibility determination was the result of fraud or that definitive criteria have not been applied.

Moreover, we see no grounds for protest in the contentions that the procurement received inadequate publicity and that the low bidder unfairly was furnished the

prior contract price. This procurement was published in the Commerce Business Daily on December 5, 1977, pursuant to Armed Services Procurement Regulation § 1-1003, and all potential bidders, therefore, had constructive knowledge thereof. The Bureau of National Affairs, Inc., B-189962, September 20, 1977, 77-2 CPD 206. Furthermore, prior contracts and their prices generally are matters of public record and such information is available upon request.

Accordingly, this protest is dismissed for failure to state an adequate ground for protest.


Paul G. Dembling
General Counsel